

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. On July 18, 1999, while working for Premier Health Services, Ms. Linsner experienced severe low back pain when she coughed. The pain radiated into Ms. Linsner's legs and forced her to the floor.
2. After the initial pain decreased, Ms. Linsner returned to her duties as a certified nurse's aide. She continued to work until approximately 2:00 a.m., when her symptoms had increased to the extent that she could hardly move. At that time, Ms. Linsner went home.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. The Appeals Board agrees with the Judge that Ms. Linsner has failed to prove that she injured her back as the result of an accident that arose out of and in the course of her employment with Premier Health Services. As indicated above, Ms. Linsner concedes that the coughing incident is not compensable under the Workers Compensation Act. And the medical evidence introduced to date fails to prove that Ms. Linsner further injured her back in the approximate two hours that she worked following the coughing incident.
3. The Workers Compensation Act places the burden of proof on injured workers to establish their rights to compensation.¹ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.²
4. Ms. Linsner has failed to prove that she injured her back in an accident that arose out of and in the course of her employment. Further, Ms. Linsner has failed to prove that the work that she performed following the coughing incident either permanently aggravated her back condition or that those work activities are responsible for the present need for medical treatment. Therefore, Ms. Linsner's request for benefits should be denied.
5. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.³

¹ K.S.A. 1998 Supp. 44-501(a).

² K.S.A. 1998 Supp. 44-508(g).

³ K.S.A. 1998 Supp. 44-534a(a)(2).

6. The Appeals Board notes that Respondent's Exhibit #5, which is identified as an incident report, is not attached to the preliminary hearing transcript. But that document is included in Claimant's Exhibit #1 and has been considered in this review.

WHEREFORE, the Appeals Board affirms the November 2, 1999 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of December 1999.

BOARD MEMBER

c: Joseph Seiwert, Wichita, KS
Larry D. Shoaf, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director